

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 5:060. KPDES application requirements.

6 RELATES TO: KRS 224.01-010, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40  
7 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts  
8 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023[~~EO 2008-507, 2008-531~~]

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40  
10 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts  
11 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

12 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet  
13 to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any  
14 waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits  
15 pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387,  
16 subject to the conditions established in 33 U.S.C. 1342(b) and (d) and that any exemptions  
17 granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. [~~EO~~  
18 ~~2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public~~  
19 ~~Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative  
20 regulation establishes the application requirements for a KPDES permit and contains additional  
21 requirements for general and specific categories of dischargers.

1 Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the  
2 interpretation of the federal regulations cited within this administrative regulation.

3 Section 2. Applying for a KPDES Permit.

4 (1) Application requirements. A person who is required to have a permit, including a new  
5 applicant or permittee with an expiring permit, shall complete, sign, and submit an application to  
6 the cabinet as established in this administrative regulation and 401 KAR 5:055.

7 (2) Duty to apply.

8 (a) 1. A person who discharges or proposes to discharge pollutants and who does not have  
9 an effective permit shall submit a complete application to the cabinet in accordance with this  
10 section, unless excluded as established in clauses a. through c. of this subparagraph.

11 a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28,  
12 effective July 1, 2011 [~~2008, as amended in the Federal Register, Volume 73, Number 225~~  
13 ~~P70483, November 20, 2008~~].

14 b. A person discharging to a POTW as established in 40 C.F.R. 122.3, effective July 1, 2011  
15 [~~2008~~] unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m),  
16 effective July 1, 2011 [~~2008~~].

17 c. A user of a privately owned treatment works, unless the cabinet requires an individual  
18 permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2011 [~~2008~~].

19 2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44  
20 (k), effective July 1, 2011 [~~2008~~].

21 (b) An applicant shall submit the appropriate application form, as established in Table 1. of  
22 this paragraph.

TABLE 1
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Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21, effective July 1, 2011 [~~2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008~~] and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits.

(a) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application; and
2. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

1        (b) Effect. A permit continued pursuant to this subsection shall remain fully effective and  
2 enforceable until the effective date of a new permit.

3        (c) Enforcement. If the permittee is not in compliance with the conditions of the expiring or  
4 expired permit the cabinet shall do the following:

5            1. Initiate enforcement action based upon the permit that has been continued;

6            2. Issue a notice of intent to deny the new permit pursuant to 401 KAR 5:075, Section 3;

7            3. Issue a new permit pursuant to 401 KAR 5:075 with appropriate conditions to ensure that  
8 the permit is protective of water quality; or

9            4. Take action authorized by KRS 224 and 401 KAR Chapter 5.

10        ~~[shall be as established in 40 C.F.R. 122.6, effective July 1, 2008.]~~

11        (5) An animal feeding operation may submit Form NDCAFO to satisfy the voluntary  
12 certification of no-discharge pursuant to 40 C.F.R. 122.23(i), effective July 1, 2011 [2008, as  
13 ~~amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008~~].

14        Section 3. Service of Process.

15        (1) Each applicant and permittee shall provide the cabinet with an address for receipt of a  
16 ~~[any]~~ legal document for service of process.

17        (2) The last address provided to the cabinet pursuant to this provision shall be the address at  
18 which the cabinet shall tender a ~~[any]~~ legal notice.

19        Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications  
20 and reports shall be as established in 40 C.F.R. 122.22, effective July 1, 2011 [2008].

21        Section 5. Concentrated Animal Feeding Operations.

22        (1) Additional permit application and special KPDES program requirements shall be as  
23 established in 40 C.F.R. 122.23, effective July 1, 2011 [2008, ~~as amended in the Federal~~

1 ~~Register, Volume 73, Number 225 P70480-70483, November 20, 2008].~~

2 (2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and  
3 conditions of a general permit if a CAFO obtains coverage under a general permit in accordance  
4 with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to  
5 the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.62, effective July 1, 2011 [~~as~~  
6 ~~amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008].~~

7 (3) The incorporation of changes to the terms of a CAFO's nutrient management plan that  
8 have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6),  
9 effective July 1, 2011, [~~as amended in the Federal Register, Volume 73, Number 225 P70484,~~  
10 ~~November 20, 2008]~~ shall be a minor modification as established in 40 C.F.R. 122.63, effective  
11 July 1, 2011 [~~as amended in the Federal Register, Volume 73, Number 225 P70485, November~~  
12 ~~20, 2008].~~

13 Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal  
14 production facility shall be a point source subject to the KPDES permit program and shall be  
15 subject to permit application and special KPDES program requirements established in 40 C.F.R.  
16 122.24, effective July 1, 2011 [~~2008~~].

17 Section 7. Aquaculture [~~Concentrated Aquatic Animal~~] Projects. A discharge into an  
18 aquaculture [~~aquatic animal~~] project shall be a point source subject to the KPDES permit  
19 program and the requirements established in 40 C.F.R. 122.25, effective July 1, 2011 [~~2008~~].

20 Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject  
21 to the KPDES permit program and the requirements established in 40 C.F.R. 122.26, effective  
22 July 1, 2011 [~~2008~~].

23 Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject

1 to the KPDES permit program and the requirements established in 40 C.F.R. 122.27, effective  
2 July 1, 2011 [~~2008~~].

3 Section 10. Regulated Small MS4.

4 (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30,  
5 effective July 1, 2011 [~~2008~~].

6 (2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R.  
7 122.32, effective July 1, 2011 [~~2008~~].

8 (3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33,  
9 effective July 1, 2011 [~~2008~~].

10 (4) The permit for a small MS4 shall contain [~~the~~] conditions consistent with the  
11 requirements established in 40 C.F.R. 122.34, effective July 1, 2011 [~~2008~~].

12 (5) A small MS4 may share responsibilities to implement minimum control measures as  
13 established in 40 C.F.R. 122.35, effective July 1, 2011 [~~2008~~].

14 Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

15 (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in  
16 the federal regulations cited in Sections 1 through 10 of this administrative regulation.

17 (2) "Cabinet" shall be substituted for "Director" if the authority to administer federal  
18 regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to  
19 the cabinet.

20 (3) "KPDES" shall be substituted for "NPDES" if the authority to administer federal  
21 regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to  
22 the cabinet.

23 (4) The forms required in Section 2(2)(b) of this administrative regulation shall be

substituted for the federal forms established in 40 C.F.R. 122.21, effective July 1, 2011 [~~2008~~].

(5) (a) The conditions for Cooling Water Phase II established in 40 C.F.R. 122.21(r)(1)(ii) shall be modified to remove the references to 40 C.F.R. 125.95, effective July 1, 2011 [~~2008~~].

(6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C.F.R. 122.21(m)(6) shall be modified to 40 C.F.R. 124.62, effective July 1, 2011 [~~2008~~].

## Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) KPDES Form 1, DEP 7032, February 2009;

(b) KPDES Form A, DEP 7032A, February 2009;

(c) KPDES Form B, DEP 7032B, February 2009;

(d) KPDES Form C, DEP 7032C, February 2009;

(e) KPDES Form SC, DEP 7032SC, February 2009;

(f) KPDES Form F, DEP 7032F, February 2009;

(g) KPDES Form NE, DEP 7032NE, February 2009; and

(h) KPDES Form NDCAFO, DEP 7032NDCAFO, February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

401 KAR 5:060 “KPDES application requirements.” approved for promulgation:

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Date

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Lenard K. Peters, Secretary  
Energy and Environment Cabinet



**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 28, 2012 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky.

Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Karen Cronen  
Division of Water  
200 Fair Oaks Lane  
Frankfort, KY 40601  
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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:060

Contact Person: Sandy Gruzesky, Director

**(1) Provide a brief summary of:**

- (a) What this administrative regulation does:** This administrative regulation establishes the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.
- (b) The necessity of this administrative regulation:** This administrative regulation establishes specific requirements for permitting discharges into waters of the Commonwealth.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act, 33 USC Section 1251 – 1387, subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation provides specific requirements for several categories of permits; furthermore, the administrative regulation references specific documents and governing federal regulations relevant to the permitting process.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

- (a) How the amendment will change this existing administrative regulation:** The amendment to this administrative regulation updates the citations to the corresponding federal regulations and clarifies that the state requirements are the same as the federal requirements. Additionally, the amendment clarifies the cabinet's authority for continuation of an expired permit.
- (b) The necessity of the amendment to this administrative regulation:** 40 C.F.R. 123.62 requires the cabinet to submit for EPA's approval the Kentucky National Pollutant Discharge Elimination System administrative regulations. The most recent revisions, effective 2009, were submitted to EPA and EPA partially approved Kentucky's administrative regulations in February 2012. The revisions to this administrative regulation are necessary to clarify that Kentucky's regulations are no less stringent than the federal regulations and to gain full approval from EPA.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act, 33 USC Section 1251 – 1387, subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.
- (d) How the amendment will assist in the effective administration of the statutes:** The

amendment to this administrative regulation will clarify that Kentucky's regulation is no less stringent than the corresponding federal regulations and the authority of the cabinet to administratively continue an expired permit.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This administrative regulation affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. Although over 10,000 permitted entities are affected by this administrative regulation, the amendment will not change the way the program is implemented.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** The amendment to the administrative regulation does not change the way the program is implemented; so, regulated entities will not need to take any additional action.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Under this regulation, individuals, businesses, and organizations are not expected to experience any additional cost. Because these requirements are already in federal requirements, amending this regulation for consistency with federal regulations will create no additional economic burden upon affected entities.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

  - (a) Initially:** No additional cost is anticipated.
  - (b) On a continuing basis:** No additional cost is anticipated.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?** Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No additional fees or funding are expected to support this amendment.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This amendment does not directly or indirectly affect fees.
- (9) TIERING: Is tiering applied? (Explain why or why not)** Permit requirements are tiered based upon the nature and size of the wastewater discharge.

## **FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

**Regulation #:** 401 KAR 5:060

**Contact Person:** Sandy Gruzesky, Director

**1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

**2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

**3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

Because these requirements are already in federal regulations, amending this regulation for consistency with federal regulations will create no additional economic burden upon state or local agencies.

(a) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** This amendment is not expected to impact revenue.

(b) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** None

(c) **How much will it cost to administer this program for the first year?** No additional cost is expected.

(d) **How much will it cost to administer this program for subsequent years?** No additional cost is expected.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):**

**Expenditures (+/-):**

**Other Explanation:**

## **FEDERAL MANDATE ANALYSIS COMPARISON**

Administrative Regulation#: 401 KAR 5:060

Contact Person: Sandy Gruzesky, Director

**1. Federal statute or regulation constituting the federal mandate.**

40 C.F.R. 122 and 33 U.S.C. 1251-1387.

**2. State compliance standards.**

KRS 224.16-050

**3. Minimum or uniform standards contained in the federal mandate.**

The federal standard requires that delegated states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

**4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?**

No.

**5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** Not applicable.